

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

JOSEPH KAVALOUSKY,)	Case No.: 5:12 CV 2162
)	
Plaintiff)	
)	
v.)	JUDGE SOLOMON OLIVER, JR.
)	
CAROLYN W. COLVIN,)	
Acting Commissioner of Social Security,)	
)	
Defendant)	<u>ORDER</u>

The Commissioner of Social Security (the “Commissioner”) denied disability benefits to the claimant, Joseph Kavalousky (“Plaintiff”) in the above-captioned case. Plaintiff sought judicial review of the Commissioner’s decision. (Compl., ECF No. 1.) Plaintiff subsequently filed a Motion to Remand, which he later amended. (ECF Nos. 16, 21.) Plaintiff requested that the court enter an order remanding the case to the Commissioner so that she might review the new evidence that he submitted to this court. Plaintiff argued, in the alternative, that the court remand the case because the Administrative Law Judge (“ALJ”) failed to consider the evidence that Plaintiff suffered from anxiety and doctors had prescribed anti-anxiety medications for him. Thus, Plaintiff maintained, that the ALJ failed to consider Plaintiff’s anxiety at any step of the sequential analysis. This court referred the case to Magistrate Judge Nancy Vecchiarelli for preparation of a report and recommendation (“R&R”).

Magistrate Judge Vecchiarelli submitted her R&R on April 18, 2013, recommending that the Motion to Remand be denied and the Commissioner's decision be affirmed (R&R at 14, ECF No. 26.) First, she concluded that the new evidence, Plaintiff's October 2012 MRI, demonstrated to some extent that Plaintiff's condition had deteriorated since 2008. Next, she determined that, because Plaintiff cannot show that had the ALJ been presented with the October 2012 MRIs, he would have come to a different conclusion with respect to Plaintiff's applications, the new evidence was not material. Consequently, the Magistrate Judge recommended that the court deny the Motion in regard to Plaintiff's request to remand his case for consideration of new evidence. After reviewing the merits of the Commissioner's decision, the Magistrate Judge determined that there was insufficient evidence to support a finding that Plaintiff suffered from anxiety of a type that is an impairment under the Social Security Act. Thus, the Magistrate Judge found, the ALJ was not required to consider it. Accordingly, the Magistrate Judge recommended that the court affirm the Commissioner's decision.

As of the date of this Order, Plaintiff has not filed an Objection to the R&R, which was due by May 3, 2013. By failing to do so, Plaintiff has waived the right to appeal the Magistrate Judge's recommendation. *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140 (1985).

The court finds, after careful *de novo* review of the Magistrate Judge's Report and Recommendation and all other relevant documents in the record, that the Magistrate Judge's conclusion is fully supported by the record. Accordingly, the court adopts as its own the Magistrate Judge's Report and Recommendation (ECF No. 26.) Consequently, Plaintiff's Amended Motion to Remand (ECF No. 21) for consideration of new evidence, or, alternatively, for the ALJ's failure to

consider evidence that Plaintiff suffered from anxiety is denied. Plaintiff's Motion to Remand (ECF No. 16) is denied as moot. The court hereby affirms the Commissioner's final decision.

IT IS SO ORDERED.

/s/ SOLOMON OLIVER, JR. _____
CHIEF JUDGE
UNITED STATES DISTRICT COURT

May 7, 2013